IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5485 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5485 of 1992
MR SN SOPARKAR,SENIOR ADVOCATE WITH MS.VAIBHAVI PARIKH for Petitioner No. 1
MR UR BHATT, AGP. for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 03/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 The petitioner has challenged notification dated 28/7/1992 issued by respondent No.2 intending to auction building being a factory shed owned by the petitioner and located on plot No.46/A belonging to Gujarat Industrial Development Corporation.

2 The petitioner is a Limited Company carrying on manufacturing activities at factory premises situate on plot No.47, Phase-I, G.I.D.C.Industrial Estate, Vatva, Ahmedabad. It is the case of the petitioner that in light of its need for a larger area for the purpose of expansion it bought over right, title and interest of the factory shed situate on adjacent plot of land bearing No.46/A in the same Industrial Estate. That as the land was owned by G.I.D.C. the petitioner approached the G.I.D.C. along with appropriate fees and by order dated 12/9/1989 G.I.D.C. granted the application made by the petitioner for transfer of lease hold rights of plot No.46/A in favour of the petitioner. That as per the format of deed supplied by G.I.D.C. the petitioner got executed by G.I.D.C. a lease deed on 7/11/1989 in favour of the petitioner. Thereafter the petitioner got four sale-deeds executed by the partners of one M/s.Rasdip Electricals on 14/3/1990 transferring the right, title and interest in the Factory Shed put up by the said firm on the plot of land bearing No.46/A of the Industrial Estate.

3 According to the petitioner, as M/s.Rasdip Electricals appeared to be in default in relation to payment of sales tax, respondent No.2 issued impugned Notification dated 28/7/1992 in the first week of August,1992. Under the said Notification, the building which was owned by M/s.Rasdip Electricals before it was transferred to the petitioner, was sought to be auctioned together with certain furniture mentioned in the Notification. On receipt of the impugned Notification the petitioner approached respondent No.2 and explained the factual position. However, it is stated by the petitioner that respondent No.2 refused to drop the proceedings as on the records of the Sales Tax Department the property in question continued to be owned by the said firm of M/s.Rasdip Electricals.

4 The case of the petitioner in light of the aforesaid facts is that the petitioner had acquired building from the said firm of M/s.Rasdip Electricals after payment of full consideration and the petitioner

was at no time aware of any alleged outstanding dues of sales tax from M/s.Rasdip Electricals. That if the respondents are entitled to make any recovery of sales tax from the said firm of M/s.Rasdip Electricals it would be open to the Sales Tax Department to initiate appropriate proceedings against the said firm and/or its partners and property of the firm and/or its partners, but it was not open to the respondents to take any action in relation to the building which had been transferred under registered sale deeds in favour of the petitioner. In other words, the contention was that M/s.Rasdip Electricals and its partners had ceased to be the owners of the industrial shed situate on plot No.46/A of industrial estate. It is further the case of the petitioner that the petitioner had incurred substantial expenditure in setting up and starting manufacturing activity in the said industrial shed and if the said property is put to sale it will result in grave and irreparable injury to the petitioner.

4.1 It was further urged on behalf of the petitioner that neither the provision of Section 48 or 47A of the Sales Tax Act,1969 could be pressed into service by the respondent authorities in light of the fact that the petitioner was not a debtor of the Sales Tax Department, was not even a debtor of the defaulter and the property in question did not belong to the defaulter.

5 Heard Mr.U.R.Bhatt, learned Assistant Government Pleader on behalf of the respondents. He has relied on the orders and the impugned Notification and reiterated the stand of the Sales Tax Department.

6 The petition was admitted on 7/9/1992 but no affidavit-in-reply has been tendered on behalf of the respondents. In the circumstances, the facts averred in the petition remain uncontroverted. It is an admitted position that the sale-deeds executed in March,1990 were registered sale-deeds and accordingly the petitioner became the owner of the said property in law. As against that the impugned Notification (Annexure-A) is dated 28/7/1992 and has been issued in first week of August,1992 only. In these circumstances, as per the settled legal position the ownership of the petitioner qua the industrial shed situate on plot No.46/A of G.I.D.C.Industrial Estate cannot be disputed and no provision is pointed out under the Sales Tax Act under which it is permissible for the respondents to either attach the said property or auction the same for recovery of outstanding dues of third party viz. M/s.Rasdip Electricals.

7 In view of the above, the respondents are prohibited from recovering any sales tax dues of M/s.Rasdip Electricals from any of the properties owned by the petitioner including industrial shed situate on plot No.46/A of G.I.D.C.Industrial Estate, Vatva, Ahmedabad.

9 In the result, the petition is allowed. Rule made absolute with no order as to costs.

(D.A.Mehta, J)

(H.N.Devani, J)
m.m.bhatt